

COPYRIGHT ROYALTY TRIBUNAL

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In the Matter of: :

CABLE COPYRIGHT ROYALTY :
DOCKET NO. CRT 89-2-87CD

DISTRIBUTION PROCEEDINGS - :

PHASE II :

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(This volume contains pages 373 through 449)

Room 458
1111 20th Street, N.W.
Washington, D.C.

Tuesday, December 5, 1989

The hearing in the above-entitled matter was
convened pursuant to Notice, at 10:00 a.m.

BEFORE:

J.C. ARGETSINGER	Chairman
MARIO F. AGUERO	Commissioner
ROBERT CASSLER	General Counsel

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IDENTIFICATIONIN
EVIDENCESettling Devotional Claimants

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P R O C E E D I N G S

(10:00 a.m.)

CHAIRMAN ARGETSINGER: On the record. We will hear the rebuttal case of the CTC, but before we start that, one preliminary matter. It came up yesterday in the testimony that WOR, at sometime during 1987, ceased broadcasting the 700 Club, and the Tribunal would find it helpful to its deliberations to know at what point, if either party can bring that forth, the Tribunal so requests.

COMMISSIONER AGUERO: The drop of the 700 Club in 1987, the time, the exact time.

MR. HARRINGTON: We do not have that with us today, Mr. Chairman, but we will endeavor to supply that to you. I'm sure there will be no problem getting that date within a few days.

CHAIRMAN ARGETSINGER: Well, Mr. Kennedy, and, of course, you can remain seated. You don't have to go back over to the counsel table to examine yourself and, of course, you're still under oath from your last appearance, and we welcome you back as a witness.

Whereupon,

ROBERT KENNEDY

was called as a witness and, having been previously duly sworn, was examined and testified as follows:

THE WITNESS: Thank you. I appreciate that.

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1 Before I start, there is a correction to note in our
2 rebuttal. On page 7, Fee Generation section, the Federal
3 Register number has a type. Instead of 12-802 it should be
4 12-808.

5 And I would like to add that I am the sponsoring
6 witness for all of the exhibits included in my rebuttal case,
7 and believe them to be correct and true to the best of my
8 knowledge and belief.

9 DIRECT TESTIMONY

10 THE WITNESS: I would like to have the rebuttal
11 case for the Christian Television Corporation stand as is,
12 and I am open to questions on that.

13 CROSS-EXAMINATION

14 BY MR. HARRINGTON:

15 Q Mr. Kennedy, if you turn to page 3 of your rebuttal
16 testimony, there you will see in the second full paragraph,
17 is a characterization of Dr. David Clark's direct testimony
18 regarding carriage of the PTL Club on a Los Angeles station.
19 Do you see that?

20 A Yes.

21 Q And in the following paragraph you say that the PTL
22 Club was not carried by 12 or 13 stations beyond the February
23 rating period, and none in the '87-2 accounting period, is
24 that right?

25 A I believe that's correct, from the Special Nielsen

1 Study.

2 Q And is it your testimony that the PTL Club was not
3 carried by KHJ in November of 1987?

4 A No, sir.

5 Q That's not your testimony?

6 A No, sir.

7 Q What is your testimony about the carriage of KHJ?

8 A I could not find that it was carried.

9 Q Is it fair to characterize your testimony that Dr.
10 Clark's testimony was in error?

11 A That is difficult to say. From what he said, it
12 could be in there.

13 Q Could be in there. But you don't know whether it's
14 in error or not?

15 A I don't know. I could not find any evidence to
16 back up what he said.

17 Q Did you try calling KHJ and asking them whether
18 they carried the PTL Club after February 1987?

19 A No, sir.

20 Q You didn't.

21 A I looked in the Nielsen rating books and also in
22 the study that was supplied by Settling Devotional Claimants.

23 Q And it's your testimony that the Nielsen rating
24 books do or do not reflect carriage of PTL on KHJ and other
25 stations beyond February 1987?

1 A I could not find in the Nielsen ROSP devotional
2 book.

3 Q In the Nielsen ROSP book?

4 A Right.

5 Q And the ROSP book has not been admitted in
6 evidence, is that correct?

7 A They would not allow it admitted in evidence.

8 Q Did you check the Nielsen Study that was made
9 available to you by the Devotional Claimants?

10 A I'm not sure -- are you talking about the Special
11 Nielsen Study?

12 Q The Special Nielsen Study.

13 A Yes, I did.

14 Q And was carriage of KHJ listed there?

15 A It was listed, but not through 1987, not all the
16 way through.

17 Q Well, let's look at your CTC Rebuttal Exhibit
18 Number 1, which features the carriage of the PTL Club, and it
19 shows carriage from January to May at KHJ, and the other
20 stations either in February only, or in the January and
21 February rating cycles. What is the source of that
22 documentation?

23 A This came directly from the information that you
24 sent me, the Special Nielsen Study.

25 Q And are you sure that this is accurate and correct?

1 A To the best of my knowledge, it is, yes.

2 Q Let me call your attention then to page -- do you
3 have the Nielsen Special Report with you?

4 A I think I do, somewhere in here.

5 Q Good. If you would get it out, please. I want to
6 go through these one by one.

7 A PTL first?

8 Q Well, I want to go to station KHJ, do you have
9 those with you?

10 A I took these copies here. I'm not sure what you're
11 referring to.

12 Q Well, let me show you specifically the full record
13 print of the Special Nielsen Survey, and I call your
14 attention to page 53.

15 A Okay. Now, I did not copy the entire --

16 Q But this was provided to you by the Devotional
17 Claimants, wasn't it, in discovery?

18 A It was too laborious to copy the entire --

19 Q So, you didn't look up to see whether any of the
20 stations were listed?

21 A I looked up the end part here, where it gives the
22 title of the program, the months that the program was on,
23 what station it was on, and came up with the total number --

24 Q Well, let me ask you to turn to page 53, which is
25 the printout for KHJ, and you will find that the programs

1 listed there are alphabetical.

2 Now, let me ask you to look for a program called
3 the Jim and Tammy Show. Do you see that listed for KHJ?

4 A Not at this point. It is alphabetical, correct?

5 Q Should be.

6 A On page 53?

7 Q I'm not sure it's on page 53. Fifty-three is the
8 KHJ print, and it would be in the listings for KHJ.

9 A Okay. Here it is on page 52.

10 Q Now, is the Jim and Tammy Show, the Jim Bakker and
11 Tammy Bakker Show, otherwise known at times as the PTL Club?

12 A Yes.

13 Q And does that show that the Jim and Tammy Show was
14 carried on KHJ during 1987?

15 A Yes, it does.

16 Q What rating periods is it listed for?

17 A It's listed on January, February, May, July,
18 October and November.

19 Q You're sure about that? I think if you go across,
20 it's listed in January and February only.

21 A Okay. Jim and Tammy -- oh, you're right, January
22 and February.

23 Q Now go down and look under PTL Club.

24 A All right.

25 Q Is there an entry there?

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1 A Yes.

2 Q And what rating periods does it show?

3 A It shows May, July, October and November.

4 Q So, in fact, Dr. Clark's testimony was correct, and
5 in the Special Nielsen Survey, every one of the six rating
6 periods shows that the PTL Club was being carried, is that
7 right?

8 A According to this, yes.

9 Q Okay. Let's turn to the entry for KICU, that's the
10 second station you have listed.

11 A What page is that?

12 Q About page 56 to 57.

13 A Okay.

14 Q Would you look up under Jim and Tammy again?

15 A All right.

16 Q Is that listed?

17 A Uh-huh.

18 Q And what rating periods does it show for?

19 A It shows January and February.

20 Q And look under PTL Club. Is there an entry there?

21 A Yes.

22 Q And what does it say? What rating period is it in?

23 A It looks like May only.

24 Q But you didn't list it in May in your Exhibit
25 Number 1, did you?

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1 A No.

2 Q Mr. Kennedy, I don't want to go through this whole
3 thing. I have personally checked every one of these, and I
4 will give you an opportunity, when we have a break, to go
5 over it, to check my analysis, but my analysis shows, and
6 I'll go station by station, that for KVOs, the Jim and Tammy
7 Show is shown in the February rating period and in the May
8 rating period;

9 That for WDCA they are show -- the Jim and Tammy
10 Show is shown for January and February; that for WGRZ the Jim
11 and Tammy Show is shown in the February rating period, the
12 PTL Club in the May and July rating periods;

13 For WMUR the Jim and Tammy Show is shown for
14 January and February, the PTL Club for May; for WNJU the Jim
15 and Tammy Show is shown for January and February, the PTL
16 Club is shown for May, July, October and November.

17 A Why is that listed two different ways, PTL Club and
18 Jim and Tammy?

19 Q I have no idea. I think they changed the name
20 during the course of the year.

21 A Okay.

22 Q WNUV, Jim and Tammy is listed in January and
23 February rating periods, PTL Club in May, July, October and
24 November; WPHL, Jim and Tammy Show in January and February,
25 PTL Club in May, July, October and November;

1 WTRF, Jim and Tammy Show in February, PTL Club is
2 listed in May. July and November; WUAB, Jim and Tammy Show is
3 listed in January and February, PTL Club in May, July,
4 October and November;

5 WVTV, Jim and Tammy Show in January and February
6 rating periods, PTL Club in May, July, October and November;
7 WWSB, Jim and Tammy Show listed for February.

8 We will take a break later, and I would like you to
9 go through and check, and then I'll ask you again if you have
10 checked and if you find any discrepancies, and I'll give you
11 my handwritten list so you can check it.

12 Now, Mr. Kennedy, you note in several instances
13 that a program was carried in February only. Let's take a
14 look at KVOS, and I don't have the page number, but if you
15 will look at your Exhibit Number 1, to start with. You
16 listed February only, right?

17 A Right.

18 Q Why don't you turn to the Nielsen Special Study
19 page for KVOS, and the stations are listed alphabetically. I
20 don't have the exact page number.

21 A Okay.

22 Q Do you know where KVOS is licensed to?

23 A Bellingham, Washington.

24 Q Do you know if they were on all six Nielsen rating
25 cycles in Bellingham, Washington, in 1987?

1 A It looks like -- I'm not sure.

2 Q Are any programs listed in the January rating
3 cycle?

4 A No, there are not.

5 Q None of any type -- devotional, syndicated, movies,
6 sports, any kind?

7 A I don't see any, no.

8 Q And if you will look at WGRZ, you'll see there's no
9 January rating period entries for that station either, are
10 there?

11 A No, there's not.

12 Q And for WTRF, if you will look at that one.

13 A All right.

14 Q There's no January entries for WTRF, are there?

15 A That's correct.

16 Q There's also no October rating period listed, is
17 there?

18 A That is also correct.

19 Q And, similarly, for WWSB --

20 A Yes?

21 Q -- there's no January ratings, no July ratings, and
22 no October ratings, are there?

23 A That's correct.

24 Q So, it's not surprising that a program might not
25 appear in the January rating cycle, is that right?

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1 A According to this, I don't see it.

2 Q Okay. Now let's get to the bottom line of your CTC
3 Rebuttal Exhibit Number 1. There you say that none of the
4 distant stations carrying PTL were reported carrying the PTL
5 Club from July to November, 1987. That's just not true, is
6 it?

7 A From the information that I took, it is, but from
8 the information I've seen today, it's not, no.

9 Q Where was the information that you took?

10 A I took the information from the beginning, which
11 lists -- like from page 1 to page 14, which listed the
12 stations I was searching for -- not the stations -- the name
13 of the program, and it's a detailed report of all the call
14 signs, the day of the week, the month and time of day.

15 Q Look under the PTL Club and see if there are any
16 entries after -- from July on, in 1987.

17 A PTL Club -- (perusing document) -- for which
18 station?

19 Q For any station. You said there are none.

20 A There is.

21 Q There is. So, Exhibit 1 is just wrong, isn't it,
22 Mr. Kennedy?

23 A Let me check one fact here, if I could, please.

24 MR. HARRINGTON: Mr. Chairman, perhaps in view--
25 and this is an important piece of testimony, a major facet,

1 as I view it, of the rebuttal case of CTC. I don't want any
2 questions about the accuracy. Perhaps if we could take a
3 five-minute or ten-minute break to let Mr. Kennedy go over
4 the listings, both station listings in general and individual
5 station listings, and see whether I'm right or whether I'm
6 wrong.

7 THE WITNESS: That's really not necessary. I will
8 take your word for it. I don't have the information for PTL.
9 I have 700 Club here that I have copies for, but I don't have
10 PTL down here. I think this is the page that I took it from,
11 though.

12 BY MR. HARRINGTON:

13 Q Would you be willing to withdraw Exhibit Number 1
14 then?

15 A Let me go ahead and look it over then.

16 MR. HARRINGTON: If we could take a short break?

17 CHAIRMAN ARGETSINGER: Yes. Commissioner?

18 COMMISSIONER AGUERO: Mr. Harrington, from what I
19 see here, you rebut completely the Exhibit Number 1 from CTC,
20 but if Mr. Kennedy would withdraw his exhibit, this won't
21 change in any way your Exhibit Number R-9, your Devotional
22 Claimants' Rebuttal Exhibit Number R-9?

23 MR. HARRINGTON: Let me take a look at that
24 exhibit. (Perusing document) It wouldn't change R-9 at all.

25 COMMISSIONER AGUERO: It doesn't change your

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1 exhibit at all?

2 MR. HARRINGTON: No. It changes none of our other
3 exhibits.

4 COMMISSIONER AGUERO: Your numbers won't change
5 even if he withdraws the exhibit?

6 MR. HARRINGTON: That's correct, Commissioner
7 Aguero.

8 CHAIRMAN ARGETSINGER: Well, let's take a three- or
9 four-minute break, and maybe that will help matters.

10 (Whereupon, a short recess was taken.)

11 CHAIRMAN ARGETSINGER: Back on the record, please.
12 Mr. Harrington?

13 BY MR. HARRINGTON:

14 Q Mr. Kennedy, during the break, have you had a
15 chance to check whether the stations listed in CTC Rebuttal
16 Exhibit Number 1 were, in fact, carried after July, 1987?

17 A Yes. In going through the latter pages of the
18 document, I did find that.

19 Q And so my analysis was correct?

20 A At this point, yes.

21 Q Are you willing to withdraw CTC Rebuttal Exhibit
22 Number 1?

23 A No. I'm willing to make the changes that are
24 necessary on it, though.

25 Q Would you be willing to delete the sentence at the

1 bottom with the asterisk -- "None of the distant stations
2 reported carrying the PTL Club from July to November, 1987"?

3 A Sure.

4 Q You would. And I've already given a listing of the
5 distant stations and the months that they appeared in the
6 Special Nielsen Survey, and you didn't see any discrepancies
7 there, did you? I saw you taking notes.

8 A No.

9 Q All right, let's turn --

10 COMMISSIONER AGUERO: Excuse me -- are you going to
11 do a new exhibit, Mr. Kennedy?

12 THE WITNESS: I beg your pardon?

13 COMMISSIONER AGUERO: Are you going to redo your
14 exhibit, this one here?

15 THE WITNESS: If the record could show that the
16 additional stations -- or the additional months that he has
17 mentioned were carried by the PTL Club, or PTL was on those
18 particular months, would that --

19 COMMISSIONER AGUERO: How do we know?

20 MR. HARRINGTON: Commissioner Aguero, I gave a
21 complete listing earlier, and I've asked the witness if he's
22 checked it, and he said it's correct. And I think in our
23 Proposed Findings, we will put it all together for you in a
24 chart, if necessary.

25 COMMISSIONER AGUERO: Thank you very much, Mr.

1 Harrington.

2 MR. HARRINGTON: We won't have a problem with that.

3 BY MR. HARRINGTON:

4 Q So, and also we discussed the fact that some of the
5 entries -- for example, the ones that start in February--
6 corresponded to stations that were not subject to a ratings
7 analysis in January, is that right?

8 A From what I've seen on the PTL list, I think that
9 is correct.

10 Q And I've also done a similar analysis for the 700
11 Club, for KTXL, for WRGT, for WTTV and WYTV, which are the
12 stations that you have listed as starting in February, and
13 none of those stations were subject to a January ratings
14 analysis -- and, again, I will offer you to check me on that,
15 but --

16 A I'll take your word for it.

17 Q So, the mere fact that there is an entry that
18 starts in February does not mean that the station was not
19 carried in January. We don't know one way or the other, do
20 we? Mr. Kennedy?

21 A I'm sorry?

22 Q The mere fact that a listing does not show January,
23 starts in February, doesn't mean that the station wasn't
24 carried in January?

25 A From what I've seen so far, that is correct.

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1 Q Let me ask you to turn back now to page 1 of your
2 rebuttal testimony. There you characterize Dr. Clark's
3 testimony in the original phase of this proceeding, you say
4 "Dr. Clark reaffirmed this by saying that Settling Devotional
5 Claimants were not relying on the five criteria at all, but
6 on the Special Nielsen Study".

7 Did Dr. Clark really say that?

8 A Yes, in the transcript, I believe he did.

9 Q Well, let's look at the transcript. I call your
10 attention to page 49 and 50. Let's read exactly what Dr.
11 Clark is asked and what he said.

12 Now am I correct, Mr. Kennedy, and I'm starting at
13 the bottom of page 59, line 24, question by you to Dr. Clark
14 -- "So you are not relying on the five criteria at all then?

15 Answer by Dr. Clark, top of page 50 -- "No. At
16 this point, we're using this as a starting point".

17 Now, you asked him a question which was in the
18 negative and he answered in the negative, and the last time I
19 looked, two negatives make a positive in the English
20 language.

21 At best, this is ambiguous as to what Dr. Clark's
22 testimony is, isn't it?

23 A Not to me.

24 Q It's not? So, you asked him, you said "You're not
25 relying on the five criteria", and he denied that. He said

1 "No".

2 A He said "No. At this point, we're using this we're
3 using this", indicating the Special Nielsen Study.

4 Q Well, all he said was -- he said "No. At this
5 point, we're using it as a starting point".

6 A What is "this"? We're talking about the Special
7 Nielsen Study, and the indication was that the Nielsen Study
8 was the starting point.

9 Q Are you aware, Mr. Kennedy, that this Tribunal has
10 held that the best measure of marketplace value and of
11 benefit to the cable operator, two of the five criteria is
12 evidenced by the Special Nielsen Study?

13 A I'm sure that's included in that.

14 Q So, in fact, the Nielsen Study does reflect at
15 least some of the criteria, doesn't it?

16 A Perhaps some.

17 Q But you're not willing to concede that the language
18 of Dr. Clark is at best equivocal?

19 A Oh, no.

20 Q Well, we'll argue about that in Findings.

21 Let's turn to another what I consider
22 mischaracterization of testimony in this case, and that
23 relates to Mr. Larson's testimony at page 6 of your
24 testimony.

25 There you say "Mr. Larson, who is the expert in the

1 cable data field, stated that since the data was not complete
2 for 1987, it would be more accurate to use 1987-1 or 1987-2,
3 whichever is greater".

4 A That's correct.

5 Q First off, who says Mr. Larson is "the" expert in
6 the field of cable data?

7 A He has been admitted as an expert witness.

8 Q "An" expert, not "the" expert, is that right?

9 A He is the only one that does this research, from
10 what I understand.

11 Q The Nielsen Company does not do analysis of cable
12 information?

13 A No, he is the only one that makes the analysis of
14 this, the cable data information, that I know of.

15 Q So, by cable data, you're only talking to Mr.
16 Larson's on special study?

17 A I'm talking about the study that he did for us.

18 Q Now let's turn to page 146 of the transcript, which
19 is the citation that you give. And why don't you read out
20 loud the portion of the testimony that you believe supports
21 your characterization of Mr. Larson's testimony.

22 A It starts with line 16. The answer was "Well, it
23 looks out of line" -- this is Mr. Larson speaking -- "Also, I
24 am bothered by the fact that it uses '87-2 as a comparison
25 because, in this report, I didn't have all the data in, and

1 it seems to me you ought to use either '87-1 or '87-2, does
2 that seem clear?"

3 And the question "Whichever is greater?"

4 Answer "Yes".

5 Q So, initially he testified you ought to use either
6 '87-1 or '87-2, and then you ask "Whichever is greater", and
7 he said "Yes".

8 A Yes.

9 Q Let's turn back to page 147, and look at the answer
10 that he gave at line 16. He said "If you are comparing '86
11 in general to '87 in general, then the missing data in the
12 '87-2 -- it seems to me you should use the '87-1 data".

13 Now, are you sure that Mr. Larson's testimony is
14 unequivocal, that you should use whichever is greater, '87-1
15 or '87-2?

16 A Yes.

17 Q How can we compare apples to apples if you use
18 whichever is greater?

19 A If it's not there, if you're talking about missing
20 information from 1987-2, how could you use that?

21 Q Well, then, why don't you just use '87-1?

22 A Because the information for '87-2, some might be in
23 -- some might be in that would include more information than
24 '87-1.

25 Q And --

1 A And in my personal talks with Mr. Larson and his
2 advice to me, that is the way I went.

3 Q That's the way you went.

4 A That's right.

5 Q Well, since CBN and PTL and Old Time haven't gotten
6 material from Mr. Larson which would enable us to pick the
7 greater of '87-1 or '87-2, so to enable the Tribunal to make
8 an apples to apples and an oranges to oranges comparison,
9 I've gotten the numbers for your stations and for those for
10 PTL, CBN and Old Time, for '87-1 and for '87-2. Let me show
11 you that.

12 I ask that this document, which is a one-page
13 typewritten document, be identified as Settling Devotional
14 Claimants' Rebuttal Cross-Examination Exhibit Number RX-1,
15 and I'll give two copies to the Reporter.

16 (Whereupon, the document was
17 marked for identification as
18 Settling Devotional Claimants'
19 Rebuttal Cross-Examination
20 Exhibit No. RX-1)

21 Now, this was taken directly from your November 9th
22 study, Mr. Kennedy, and you've provided that in your rebuttal
23 case, haven't you?

24 A Yes.

25 Q And that's Exhibit Number 10, CTC Rebuttal Exhibit

1 10 is the full analysis, right?

2 A That's correct.

3 Q Now, take a second and look through Exhibit Number
4 10 and compare, to make sure that I have accurately
5 identified for the '87-1 and '87-2 accounting periods, the
6 stations that carried your programming, the number of distant
7 systems, the number of subscribers on those systems.

8 A (Perusing document) Use my --

9 Q Use Exhibit Number 10.

10 A First off, I see KFCB under '87-1 -- oh, there's
11 two '87-1s -- I'm sorry -- you took the total at the end?

12 Q That's correct, for each one.

13 A This is not just Form 3, it's all systems combined,
14 is that correct?

15 Q All systems, as far as I know.

16 CHAIRMAN ARGETSINGER: Mr. Harrington, at the
17 bottom of your exhibit --

18 MR. HARRINGTON: Yes, sir. I'll get to that with
19 the witness in a second.

20 CHAIRMAN ARGETSINGER: All right. I'll remember
21 that.

22 MR. HARRINGTON: I'm asking him to verify only the
23 material relating to CTC, at this point.

24 BY MR. HARRINGTON:

25 Q Does that seem to be correct, Mr. Kennedy?

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1 A So far, yes. I'm about half-way through.

2 Q Well, to save the Tribunal time, perhaps if you
3 find an error, if you would report it to the Tribunal and to
4 me after the hearing, it might be better. I think they are
5 accurate. I personally prepared this, straight off of your
6 printout.

7 CHAIRMAN ARGETSINGER: Mr. Harrington, you are
8 "the" expert?

9 MR. HARRINGTON: I typed it myself, late- night
10 last night.

11 BY MR. HARRINGTON:

12 Q Now, yesterday, Mr. Kennedy, you asked one of the
13 witnesses about data relating to the Settling Devotional
14 Claimants, how many subscribers and how many systems were
15 involved, is that right?

16 A I'm not sure who you are referring to.

17 Q To Ms. Moldenhauer.

18 A I questioned her on her exhibits.

19 Q And you asked her whether there were figures
20 available as to the total number of subscribers on distant
21 signals carrying CBN, PTL and Old Time, is that right?

22 A I may have, I don't recall.

23 Q Did you ask in discovery, in rebuttal discovery,
24 for a copy of the printout of the Cable Data Corporation run
25 which supported the fee generation analysis done by Ms.

1 Moldenhauer?

2 A No.

3 Q So you've never seen that?

4 A No.

5 Q Well, let me show you the printouts for 1987-1 and
6 1987-2. Take a look at them. (Handing document)

7 A Okay.

8 Q Now, if you will look at the last page of each of
9 those two documents, there's a summary, isn't there?

10 A (Perusing document) Yes.

11 Q And one of the columns relates -- one series of
12 columns relates to All Distant Carriage, do you see that?

13 A Yes.

14 Q And what are the subheadings under that section,
15 column heads?

16 A Instances of Carriage, Total Subscribers, Fee
17 Generated, Total.

18 Q Let's talk about Instances of Carriage. As I
19 understand it from Mr. Larson, that relates to the number of
20 cable systems that are carried. Now, which of the two
21 accounting periods are you looking at now, '87-1 or '87-2?

22 A This one, I believe, is '87-1.

23 Q And how many systems does it show on the All
24 Distant list, for '87-1?

25 A All Distant, total instances of carriage?

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1 Q Yes, sir, instances.

2 A Three thousand fifty-one.

3 Q And how many subscribers does it list?

4 A Fifty-eight million, three hundred ninety thousand,
5 three hundred fifty-five.

6 Q And are you aware that this printout which was done
7 by Mr. Larson for the Settling Devotional Claimants, doesn't
8 include Oral Roberts programming, doesn't include NAB local
9 programming, doesn't include Multimedia programming, any of
10 the other Settling Devotional Claimants, other than PTL, Old
11 Time and CBN?

12 A I'll take your word for it.

13 Q Let's look at the '87-2 document.

14 A All right.

15 Q Again, how many systems does it list in the
16 Incidents of Carriage in the '87-2 period, under the All
17 Distant heading?

18 A Okay, it's 3,148.

19 Q And how many subscribers?

20 A Sixty-two million, three hundred eighty-eight
21 thousand, seven hundred seventy-four.

22 Q Now, if you go back and look at our Exhibit RX-1,
23 Settling Devotional Claimants' Exhibit RX-1, you'll see that
24 the two numbers down at the bottom there are exactly the same
25 as those you've just read, is that not right?

1 A I believe that's correct, yes.

2 MR. HARRINGTON: Mr. Chairman, at this time I'd
3 like to ask that Settling Devotional Claimants' Exhibit RX-1
4 be admitted into evidence.

5 CHAIRMAN ARGETSINGER: Point of inquiry here. The
6 information at the bottom, what is that based on? Is that
7 based on any document we have?

8 MR. HARRINGTON: It's based on these documents
9 which are the Cable Data Corporation run, which formed the
10 basis of Rebuttal Exhibit Number -- primarily Exhibit R-5,
11 but also some of the other ones, and it was available to be
12 called for, and was not called for by Mr. Kennedy. If you
13 would like, I'll put it into evidence. That would be fine
14 with me. This is merely a summary. The printout itself
15 lists, by station, the number of cable systems that carried
16 on a distant signal basis, that station; the number of total
17 subscribers; the amount of fees generated, under several
18 different headings.

19 THE WITNESS: I would object to it being introduced
20 at this time.

21 CHAIRMAN ARGETSINGER: Well, there isn't a
22 sponsoring witness for that.

23 MR. HARRINGTON: I understand, but the information
24 is essentially the same as was in the testimony of Ms.
25 Moldenhauer and Rebuttal Exhibit 5 of the Devotional

1 Claimants. This is the underlying basis.

2 THE WITNESS: I have an objection. I would like a
3 ruling.

4 CHAIRMAN ARGETSINGER: The objection is sustained,
5 to introducing this document you just referred to.

6 MR. HARRINGTON: I didn't offer it, I simply said
7 if you wanted it I would be happy to give it to you, but I
8 would like to move into evidence Exhibit RX-1.

9 THE WITNESS: I object to that.

10 CHAIRMAN ARGETSINGER: On what ground?

11 THE WITNESS: It's taken from the report that he is
12 wanting to include.

13 MR. HARRINGTON: The witness has had a full chance
14 to examine the document. He has no basis to question its
15 authenticity. He can take all day to review it if he would
16 like to. He can call Mr. Larson. He had the opportunity to
17 ask for that document in discovery, he didn't do so.

18 THE WITNESS: I still object, there's no sponsoring
19 witness.

20 MR. HARRINGTON: I've introduced the information
21 through this witness, Mr. Kennedy. I think he has relied on
22 the Larson study, the Larson studies have been authenticated
23 through Mr. Kennedy and by Mr. Larson. I think it's only
24 fair, if you are going to compare apples to apples and
25 oranges to oranges, that you have the information.

1 Quite frankly, I don't think subscriber numbers or
2 system numbers is at all relevant. We don't think fee
3 generation is relevant to this proceeding at all, but since
4 Mr. Kennedy has made such a big deal about it, we have to put
5 in evidence.

6 And, so, we've simply tried to give you a
7 comparison because it is the task of this Tribunal to make a
8 comparison between the Settling Devotional Claimants and CTC.

9 CHAIRMAN ARGETSINGER: Mr. Kennedy, the first half
10 of this, is this not derived from your Exhibit 10, Rebuttal
11 10?

12 THE WITNESS: The first half is, but the last half
13 is not. It is included in this part down here.

14 CHAIRMAN ARGETSINGER: It's the last half that
15 you're objecting to?

16 THE WITNESS: That is correct.

17 CHAIRMAN ARGETSINGER: Just a moment. We will take
18 this under advisement.

19 (Off the record)

20 CHAIRMAN ARGETSINGER: On the record.

21 Mr. Kennedy, you are objecting to the entire
22 document?

23 THE WITNESS: Yes, that is correct. As I stated,
24 the 1987-1 and 1987-2 figures seem to give a distorted view
25 of what actually took place. They are totals of number of

1 systems -- the station that carried CTC distant programming,
2 35 in '87-1 and 33 in '87-2 do not compare with my 1987, or
3 my CTC Rebuttal Exhibit No. 7, which totals 39 distant
4 systems.

5 CHAIRMAN ARGETSINGER: But they do compare with
6 your Exhibit 10?

7 THE WITNESS: They do compare with Exhibit 10.
8 However, the bottom portion does not.

9 CHAIRMAN ARGETSINGER: The portion CBN-PTL?

10 THE WITNESS: That's correct.

11 CHAIRMAN ARGETSINGER: I see.

12 Mr. Harrington, did you have a comment?

13 MR. HARRINGTON: Yes, my only comment was that it
14 seems like Mr. Kennedy's argument is one as to which systems
15 should be adopted. I think that's appropriately made in
16 Proposed Findings. It is not one made on deciding which
17 evidence to admit. And it seems to me that while it is true
18 the numbers are lower, we will argue later that they are a
19 better reflection of what occurred at any point in time, to
20 use either '87-1, or '87-2, I don't care which, and rather
21 than mingle the two.

22 So, I think it is appropriate to allow this
23 evidence in. Again, it really doesn't matter because every
24 exact number that is in there has already been admitted as
25 part of CTC's Exhibit 10. And we can make findings without

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1 this exhibit, exactly the same findings.

2 (Whereupon, Exhibit SDC RX-1
3 was received into evidence)

4 CHAIRMAN ARGETSINGER: Mr. Kennedy, perhaps this
5 commissioner is missing something, you said relative '87-1,
6 relative to '87-2 does not RX-1 show both periods, 1 and 2?

7 THE WITNESS: Yes, but it gives a total at the
8 bottom.

9 CHAIRMAN ARGETSINGER: Thirty-five?

10 THE WITNESS: Thirty-five and 33.

11 CHAIRMAN ARGETSINGER: Yes. And your Exhibit 7
12 gives 39?

13 THE WITNESS: That's correct.

14 CHAIRMAN ARGETSINGER: Now, could it possibly be
15 that your Exhibit 10 and 7 are somewhat different?

16 THE WITNESS: No, they are the same. What they
17 have done here, for instance, on KTBN in '87-1 they show two
18 systems, Exhibit RX-1 shows two systems in '87-1, with zero
19 systems in '87-2.

20 So, in order to make this column in '87-2 -- or if
21 you take '87 as a whole, you will come out with 39 systems.
22 And down here again, in KYFC they show three systems in '87-
23 1, two systems in '87-2.

24 CHAIRMAN ARGETSINGER: Now, does your Exhibit 10
25 show that, also?

1 THE WITNESS: The Exhibit 10 does show that
2 information, that is correct. It does show -- I mean, those
3 are the numbers.

4 CHAIRMAN ARGETSINGER: Yes.

5 THE WITNESS: But if you are going to get the
6 correct total number of systems in 1987 as a whole, including
7 periods one and two.

8 CHAIRMAN ARGETSINGER: I understand, yes. Yes,
9 well, fine, I am glad you clarified that. But I don't know
10 that that goes necessarily to throw this out. You can
11 comment on that in your findings.

12 And regarding the second portion, which you
13 initially made the objection to, there is no supporting
14 witness, you are correct on that. This is information that
15 the CRT might have asked for during the day, and we are going
16 to permit it in.

17 Now, you must be provided a copy of the underlying
18 document and an affidavit must be produced as to who prepared
19 that. And you can comment on this exhibit, R-1X in your
20 findings, and you can produce any documents to refute it,
21 either before your Proposed Findings, or in your Findings of
22 Fact, because you are now for the first time receiving this
23 information.

24 So, in effect, you would have the opportunity to
25 surrebut this, if you wish to present any further evidence in

1 rebuttal to the Tribunal, or you may simply wish to do that
2 in your Findings of Fact, if you find this information, once
3 you are supplied the underlying document -- if you have any
4 difference with that.

5 MR. HARRINGTON: Mr. Chairman, can we get a
6 clarification?

7 CHAIRMAN ARGETSINGER: Yes.

8 MR. HARRINGTON: Mr. Chairman, I am unclear as to
9 whether we should supply an affidavit from Mr. Larson, who
10 prepared the printout, or whether we should have an affidavit
11 from someone in my firm saying Mr. Larson prepared it.
12 Either one is fine, which would you prefer?

13 CHAIRMAN ARGETSINGER: Well, we want an affidavit
14 from someone in your firm who prepared this information and
15 where you received it from.

16 MR. HARRINGTON: This information? (Indicating)

17 CHAIRMAN ARGETSINGER: Yes, this information
18 (indicating).

19 MR. HARRINGTON: I would be happy to provide that.

20 CHAIRMAN ARGETSINGER: And what the source was.

21 MR. HARRINGTON: In fact, I will supply an
22 affidavit from myself and from Mr. Larson, who prepared the
23 underlying data, we will do both.

24 CHAIRMAN ARGETSINGER: And, Mr. Kennedy, you will
25 have an opportunity to submit to the Tribunal, even before

1 your Proposed Findings of Fact, if you have anything to rebut
2 this new piece of evidence.

3 THE WITNESS: Fine.

4 BY MR. HARRINGTON:

5 Q Mr. Kennedy, let me show you -- I have taken the
6 numbers from the accounting period '87-1, shown on Exhibit
7 No. RX-1, and I have tried to derive a relative percentage.
8 Let me show you that.

9 MR. HARRINGTON: And I ask that this document which
10 I am going to hand to you, be identified as Settling
11 Devotional Claimant Rebuttal Cross-Exam Exhibit No. RX-2.
12 (Handing document)

13 (Whereupon, the document was
14 marked for identification as
15 SDC Rebuttal Exhibit RX-2)

16 THE WITNESS: (Perusing document)

17 BY MR. HARRINGTON:

18 Q Do you have a calculator with you, Mr. Kennedy?

19 A Yes, I do.

20 Q Now, you see I have taken the subscriber number
21 from Exhibit RX-1 for the period '87-1, do you see that,
22 414,887?

23 A Yes.

24 Q And I have taken the figure shown at the bottom of
25 the page for PTL, CBN and Old Time distant subscribers in

1 accounting period '87-1, 58,390,355, do you see that?

2 THE WITNESS: I have an objection. He is
3 introducing information that is taken from another cable
4 report that is not in evidence at this time.

5 CHAIRMAN ARGETSINGER: Mr. Harrington --

6 MR. HARRINGTON: Mr. Chairman, it is drawn directly
7 from Exhibit RX-1, which has just been introduced.

8 CHAIRMAN ARGETSINGER: And once we got over the
9 threshold of RX-1, that has been introduced and accepted, the
10 information on RX-2 appears to be derived from RX-1.

11 And once again, you will have the opportunity to--
12 because you have the opportunity to RX-1, to offer any
13 surrebuttal, or comments in your Findings of Fact.

14 THE WITNESS: Okay.

15 BY MR. HARRINGTON:

16 Q You see, I have added the 414,887 to 58,390,355 and
17 derived a total of 58,805,242 subscribers, being the total
18 for CTC, CBN, PTL and Old Time. Do you want to check my math,
19 please?

20 A I will take your word for it.

21 Q Okay. Now, then I took the number for CTC, 414,887
22 and divided that by 58,805,242 to derive a percentage that
23 CTC represented of the combined total. And why don't you
24 check my math, to see if that is right? I came up with --

25 A I am not sure my calculator will go that high.

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1 Q I have one that does, if it would help -- I think.

2 A I will try it and see what happens. (Complying
3 with request) That is correct.

4 Q So, it is .7 of one percent, approximately?

5 A That's correct.

6 Q And I did the math both ways, but if it is .7 of
7 one percent for CTC, then logic stands that it is a little
8 less than 99.3 percent for CBN, PTL and Old Time, is that
9 right?

10 A That's correct.

11 Q And we have indicated the Larson analysis did not
12 include Oral Roberts and other claimants who fall within the
13 Settling Devotional category. So, presumably the numbers for
14 all Settling Devotional Claimants will be slightly higher,
15 somewhat higher, is that reasonable?

16 A It sounds reasonable.

17 Q I have done the exact same thing for the second
18 period of the year.

19 MR. HARRINGTON: And I ask that this document, a
20 one-paged document, be identified as Settling Devotional
21 Claimant Rebuttal Cross-Examination Exhibit No. RX-3.

22 (Whereupon, the document was
23 marked for identification as
24 SDC RX-3)

25 BY MR. HARRINGTON:

1 Q So, let's go through the math, there again, CTC's
2 distant subscribers taken from Exhibit RX-1, 444,857 for
3 accounting period '87-2, CBN, PTL and Old Time, 62,388,744,
4 if you add the two together, you get 62,833,601. And if you
5 derived the percentages you get, again, .71 percent for CTC,
6 99.29 percent for CBN, PTL and Old Time.

7 Do you have any reason to doubt that computation?

8 A No.

9 Q Now, yesterday we questioned the inclusion by the
10 Settling Devotional Claimants of WWOR in their computations
11 of fee generation, the attempt to compare apples to apples on
12 fee generation, is that right?

13 A That's correct.

14 Q I have prepared an exhibit which removes WWOR from
15 the second half of the year, for five months for the second
16 half of the year. It assumes that the station was dropped as
17 of July 31. We are going to check, and as I have indicated,
18 we will supply that information to the Tribunal and we will
19 recompute this exhibit, if it turns out that it ended before,
20 or later in the year. But we have done the computation to
21 assist all of the parties.

22 CHAIRMAN ARGETSINGER: Now, what are you rebutting
23 now?

24 MR. HARRINGTON: This goes to the fee generation
25 analysis of Mr. Kennedy. And it is information which was, I

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1 believe, discussed rather extensively yesterday. And we are
2 trying to give a complete study.

3 Let me ask a few more questions before I show you
4 the exhibit.

5 BY MR. HARRINGTON:

6 Q You've testified in the past, have you not, about
7 whether or not CTC should be credited for carriage of WCLF on
8 the Lakeland system, is that right?

9 A Did I do it in my rebuttal case?

10 Q I asked you a question. Please answer the
11 question.

12 A I am not sure if I did in my rebuttal case, or not.

13 Q So, the figures that you have computed in your
14 rebuttal case, do they include Lakeland, or do they exclude
15 it?

16 A They include Lakeland.

17 Q They include Lakeland.

18 A Which exhibit are you talking about?

19 Q Exhibit No. 7, Exhibit 7-A, and Exhibit No. 10.

20 A Yes, they include Lakeland, that's correct.

21 Q And if you exclude Lakeland, I think we have
22 already put in exhibits in our own rebuttal case which show
23 that that would substantially reduce the amount of royalties
24 generated by WCLF, and then drew a proportionate between the
25 amount of fees generated by CBN, PTL and Old Time, and those

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1 by CTC reduce it down to about a third of a percent, is that
2 right?

3 A If you took that out, yes.

4 Q And your rebuttal case, other than including that,
5 does not address whether the Tribunal should include it, or
6 not include it?

7 A Not that I am aware of at this point. I would have
8 to go back through and see.

9 Q So, do you question, or not question the challenge
10 that was made at the original hearing session?

11 A It would be irrelevant. You are supposed to be
12 questioning me only on my rebuttal case.

13 Q Well, let me ask you are you, or are you not
14 rebutting the showing which was made regarding the Lakeland
15 system? If you are not, that's all I need to know.

16 A By what --

17 Q By what you presented in your rebuttal case?

18 A As far as I know, I am including the Lakeland
19 system in all of my studies, as I did in the original.

20 Q And we have already put in evidence as to what
21 happens if you take it out?

22 A That's correct.

23 Q And would you object to providing the Tribunal with
24 information as to what would happen to the amount of fees
25 generated if WWOR was removed from the fee generation

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1 calculation that was provided in the Settling Devotional
2 Claimants' rebuttal exhibits?

3 A Would I object to it?

4 Q Yes.

5 A If it is part of my rebuttal case, I would not
6 object to it. But if it is not, then I would object to it.

7 Q Well, let me show you the analysis that I have
8 done.

9 You see I have taken the fees generated and I have
10 subtracted five-sixth of the amount for WWOR in the second
11 half of 1987. And then I have added to that the amount
12 generated in 1987-1 and come up with a total amount.
13 (Handing document)

14 A (Perusing document)

15 Q And then I have taken the amount of your fee
16 generation analysis introduced yesterday as CTC Exhibit No.
17 RX-1, 15,311 computed the total amount of fees generated and
18 drawn percentages. That would increase the percentage for
19 CTC, isn't that correct, by reducing the amount allocated to
20 WWOR?

21 A Yes, that's correct.

22 Q Now, would you object to the introduction of this
23 sort of an exhibit?

24 A Yes.

25 Q You would? So, you do not want this Tribunal to

1 have before it the data necessary to allow it to make an
2 apples to apples and oranges to oranges comparison?

3 A If it is part of my rebuttal exhibit -- my rebuttal
4 testimony, I would not object.

5 Q You do object, or don't object?

6 A If it is part of --

7 Q Well, is it, or isn't it?

8 A (No response)

9 Q Let me identify --

10 A I am not sure.

11 Q Okay. Let me go ahead and identify it, we will
12 offer it and the Tribunal can make a ruling. That's the best
13 way to do this.

14 MR. HARRINGTON: I have handed the Reporter two
15 copies of a document which I have marked Settling Devotional
16 Claimants' Rebuttal Cross-Examination Exhibit No. RX-4, and
17 ask that it be identified for the record.

18 (Whereupon, the document was
19 marked for identification as
20 SDC Exhibit No. RX-4)

21 BY MR. HARRINGTON:

22 Q Let's go through this again, now that everyone has
23 it in front of them. What we have done here, Mr. Kennedy, is
24 to take the total fees generated for 1987-2 from the
25 Devotional Claimants, that is CBN, PTL and Old Time, which

1 was \$765,604.67 that's from our Rebuttal Exhibit No. 5. And
2 then we have taken -- subtracted from that five-sixths of the
3 amount for WWOR, which is \$343,530.80 giving us a new total
4 of \$480,474.11.

5 Do you see how I have computed that?

6 A (Perusing document) I see how you did it, yes.

7 Q Then I have added that to the '87-1 total of
8 \$707,762.24 giving a total of \$1,188,236.40. Then taken the
9 amount of fees generated, as you have corrected it in your
10 Rebuttal Cross-Examination Exhibit No. RX-1 of \$15,311.43--
11 that was introduced by your yesterday.

12 A Uh-huh.

13 Q And I have added the two together, that
14 \$1,188,236.40 to the \$15,311.43 and come up with a total fees
15 generated by all claimants of -- that's excluding, of course,
16 smaller settling devotional claimants -- of \$1,203,547.83.
17 And I have divided \$15,311.43 by the \$1.2 million number and
18 come up with 1.27 percent, this includes Lakeland -- 1.27
19 percent of the fees generated would be for CTC and 98.73
20 percent would be for PTL, Old Time and CBN.

21 Then, since the question of Lakeland and how to
22 treat it has to be decided by the Tribunal, I have said,
23 well, what happens if we did take Lakeland out -- that hasn't
24 been decided yet, but happens if we do take Lakeland out.
25 So, now I have adjusted it for the amount of fee generations

1 relating to Lakeland, 7,500; struck a new number and come up
2 with a revised percentage which works out to about .6 of 1
3 percent for CTC.

4 Now, is my mathematics at least correct, as far as
5 you know?

6 A It appears to be, yes.

7 Q Okay.

8 MR. HARRINGTON: At this point I would like to move
9 the introduction of Settling Devotional Claimant Exhibit No.
10 RX-4.

11 THE WITNESS: I object. He is introducing
12 information that is not part of my rebuttal case. The last
13 time he introduced Exhibits 1-X through 6-X, I tried to come
14 back and reintroduce some information that would offset 1-X
15 and 6-X from the last proceeding. I was not allowed to do
16 so, but told that I could do that in rebuttal, which I did,
17 which is Exhibit 7 and 7-A.

18 CHAIRMAN ARGETSINGER: Well, the objection is
19 sustained. Now, it seems to me that you are correct, Mr.
20 Kennedy, this would be in the nature of surrebuttal. And
21 although we have relaxed the rules a little bit here, this is
22 information of a nature that we asked this morning if we
23 could get some information on WWOR. And I believe that the
24 Settling Parties will be able to get these kind of
25 computations in their Findings of Fact.

1 But at this point and in this forum, it is
2 surrebuttal, and not admissible.

3 MR. HARRINGTON: We recognize that, Chairman
4 Argetsinger. The underlying information is already in the
5 record.

6 CHAIRMAN ARGETSINGER: Well, we saw this, but we
7 will disregard it for the moment.

8 (Whereupon, SDC Exhibit RX-4
9 was rejected)

10 MR. HARRINGTON: I would -- normally, when an
11 exhibit is not accepted, it remains with the record, so that
12 every reviewing court can have it in front of it, in case of
13 an appeal, and in case this Tribunal were reversed, so that
14 this Tribunal could make a decision without the need for a
15 remand hearing. It could simply take into consideration the
16 excluded evidence.

17 CHAIRMAN ARGETSINGER: You are correct, now that
18 you have revoked that. And this will be put in a sealed
19 mayonnaise jar -- put on Funk and Wagnall's back porch, in
20 case the case is appealed.

21 MR. HARRINGTON: We recognize that, and we will try
22 not to rely on it in our Proposed Findings.

23 BY MR. HARRINGTON:

24 Q Now, let's turn to page 2 of your testimony, Mr.
25 Kennedy.

1 A (Perusing documents)

2 Q There you say that the -- at the bottom of page 2,
3 am I correct in characterizing your testimony as you are
4 testifying that no specialty stations were included in the
5 119 station Nielsen sample?

6 A I said I saw no evidence of inclusion.

7 Q Well, did you see the inclusion of KXTX-TV?

8 A Yes, I did.

9 Q Do you know whether KXTX-TV is considered by the
10 Copyright Office to be a specialty station?

11 A I asked Dr. Clark that in direct testimony, and he
12 said it was not.

13 Q He said he didn't know, I think. Do you know
14 whether KXTX-TV is a specialty station?

15 A I do not.

16 Q Well, let me tell you it is a specialty station.

17 MR. HARRINGTON: And the Tribunal can take official
18 notice of that. We will ask that they do so, and provide
19 proper citations in our findings.

20 BY MR. HARRINGTON:

21 Q Now, do you know -- what is the definition of a
22 specialty station, Mr. Kennedy?

23 A From what I understand, it is a station that
24 carries at least one-third, or more of its programming as
25 religious or foreign language.

1 Q Let me ask you to turn to the Special Nielsen
2 Study, which we looked at before?

3 A All right. (Perusing documents)

4 Q For example, look at WNJU, Newark, New York--
5 Newark, New Jersey-New York City market.

6 A (Perusing documents)

7 CHAIRMAN ARGETSINGER: There is a Newark, New York.

8 MR. HARRINGTON: You learn something new every day.

9 COMMISSIONER AGUERO: WNJU, Channel 47.

10 BY MR. HARRINGTON:

11 Q Mr. Kennedy, can you tell from that whether WNJU
12 is, in fact, not a Spanish-language television station?

13 A (Perusing document) Can I tell by looking at --

14 Q Look at the names of the programs listed on WNJU,
15 aren't they all in Spanish?

16 A (Perusing document) No.

17 Q Aren't most of them in Spanish?

18 A Some of them, yes, there are several in Spanish,
19 sure.

20 Q And you do not know that WNJU is a Spanish station
21 in the New York Market?

22 A No.

23 Q You don't?

24 A Is it a specialty station?

25 Q Yes, it is. Did you do any investigation to

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1 determine whether there were any other Christian or Spanish-
2 language stations that qualified as specialty stations? Did
3 you make any investigation to determine that?

4 A Just looking at this --

5 Q Well, look at KMEX, the program listings for KMEX,
6 do you know anything about KMEX, Los Angeles?

7 A No.

8 Q Well, look at the programs on KMEX and tell me if
9 you can draw a conclusions as to whether or not KMEX is a
10 Spanish-language station?

11 A (Perusing document) Okay.

12 Q Now, can you draw any conclusions from the program
13 listings you see?

14 A Si.

15 Q It is a Spanish-language station, isn't it?
16 But I think you would find the same thing as to WLTV and
17 WXTV, they are --

18 A They are registered as a specialty station?

19 Q They are all specialty stations.

20 A Do you have that information?

21 Q Yes, I do. Now, in fact, your testimony may be
22 incorrect, at the bottom of page 2?

23 A No, it just means I found no evidence of it.

24 Q So your case is what you found in other people's
25 cases, is that right? You don't know, one way or the other?

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1 A No, from the testimony that I received from Dr.
2 Clark reference KXTX, his testimony said, no, it is not a
3 specialty station.

4 Q Well, at the lunch hour I will look that up.

5 Let me ask you what your knowledge is of the
6 criteria that are used to pick stations in the 119 station
7 Nielsen Sample, do you know what criteria are used?

8 A No, I don't.

9 Q You don't. Have you made any inquiries to find
10 out?

11 A I read the Federal Register information on how the
12 study was done.

13 Q And did you read the direct case of Dr. Clark?

14 A Yes.

15 Q You did. And do you recall Dr. Clark's testimony
16 on that point?

17 A In the direct case --

18 Q I call your attention to page 6.

19 A I don't have a copy of the direct case.

20 Q Well, look at the second paragraph of page 6
21 (handing document) of Dr. Clark's testimony.

22 A (Perusing document) Yes, I understand that, the
23 80,000 subscribers.

24 Q Now, how were the stations chosen to be in the
25 sample?

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1 A They had to have at least 80,000 subscribers.

2 Q In fact, all stations that had 80,000 distant
3 subscribers -- that were carried on cable systems with
4 subscribers having 80,000 or more subscribers were in the
5 sample, isn't that what Dr. Clark testified?

6 A I believe -- I'm not sure, are you talking about
7 all systems?

8 Q All TV stations carried on cable systems with
9 80,000 or more distant subscribers are in the sample.

10 A I'm not sure if that is correct.

11 Q Isn't that what Dr. Clark said?

12 A (Perusing document) Yes, that's what he says.

13 Q There is no winnowing process here, Mr. Kennedy.
14 So, if a specialty station were to have more than 80,000
15 distant subscribers, it would be listed, wouldn't it, under
16 these criteria?

17 A Well, according to his testimony, it would be.

18 Q And isn't your real problem that religious stations
19 tend to have relatively limited cable carriage, because they
20 are not that popular, and therefore, they don't get to the
21 80,000 subscriber level?

22 A I would tend to think that is correct, yes.

23 Q At the top of page 3 you say, "The basic criticism
24 advanced by critics of Nielsen is that for small claimants
25 can be capricious".

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1 A Uh-huh.

2 Q Now, first off, that's not a finding or conclusion
3 by the Tribunal, it is just a restatement of criticism of
4 others, is that right?

5 A I was quoting that from the Tribunal's statement.

6 Q But they are talking about what other people have
7 said, not what they think, is that right?

8 A I can't confirm that.

9 Q Well, the language speaks for itself.

10 A I don't agree with that, I think the language does
11 speak for itself regarding the Tribunal.

12 Q Well, it says, "The basic criticism advanced by
13 critics", who are the critics that they are talking about, do
14 you know?

15 A Yes.

16 Q Who?

17 A NAB.

18 Q But it is not the Tribunal members?

19 A Yes, it is the Tribunal.

20 Q NAB is a Tribunal member?

21 A No, I am saying -- you asked me who the critics
22 were, and I am saying that the Tribunal was also a critic of
23 the Nielsen Study.

24 Q But the Tribunal has relied most heavily on the
25 Nielsen Study, is that not correct?

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1 A They have relied on it, but not totally.

2 Q That's true, but almost totally. Have you got any
3 specific criticisms as to how you -- how CTC, in particular,
4 is harmed by the Nielsen Study, as a small claimant?

5 A Yes, in one case, WPCB in Greensburg-Pittsburg
6 carries our stations -- some of our programming, and in the
7 -- I believe it was the 1983 Nielsen Study, it was included
8 in that, but in the last study it was not.

9 Q And the reason for that, I assume, was that it
10 didn't meet the criteria in 1987, and it did in prior years.
11 So, perhaps, the cable carriage has gone down for WPCB.

12 A It could possibly be, I don't know.

13 Q That is a religious station, isn't it?

14 A What I am concerned about is -- another question I
15 have --

16 Q Before you go on, is WPCB predominately a religious
17 station?

18 A Predominately, yes. Now, to answer your question
19 for any other station, I believe it was KFCB that I checked
20 on, had over the 80,000 subscriber mark, but was not included
21 in that. That's why I am questioning whether or not --

22 Q Which station was that?

23 A I believe it was KFCB. It says has a total
24 subscribership of 132,532.

25 Q Yes, but the document -- and let me show you this

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1 again, I know it is not in evidence -- but take a look for
2 that station. This is, again, provided by Mr. Larson under
3 distant heading for that particular station. And I think you
4 will find that it only had 73,000 distant subscribers, and so
5 it didn't quite make the 80,000 cutoff, did it?

6 A (Perusing document) Which is correct, this one, or
7 this one?

8 Q I ask you, Mr. Larson was your witness.

9 A It seems to me -- showing here, in 1987-2, 87,000;
10 1987-1, 73,000.

11 CHAIRMAN ARGETSINGER: Excuse me, Mr. Kennedy, I
12 think we will take a 5-minute break.

13 (Whereupon, a short recess was taken)

14 CHAIRMAN ARGETSINGER: Back on the record.

15 MR. HARRINGTON: While we were off, Chairman
16 Argetsinger, you asked a procedural question of me concerning
17 the proffered exhibit, and indicated that the rules would
18 normally -- before this agency, would normally require a
19 showing of what we intended to prove by our proffer of
20 Exhibit No. RX-4.

21 And what it is intended to prove there is the
22 impact of removing WWOR from at least a portion of the
23 calculations of fee generation for the Settling Parties, and
24 concomitantly the effect of removing the Lakeland system from
25 the figures for CTC.

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1 BY MR. HARRINGTON:

2 Q Now, Mr. Kennedy, we were talking about criticisms
3 of the Nielsen and how it capriciously affects small
4 claimants like CTC. And I know you pointed to two specific
5 stations you said that should have been in the sample, and I
6 didn't control what stations got in the sample, and you
7 didn't control what stations got in the sample. But do you
8 have any fundamental issues as to how a small claimant like
9 CTC is somehow injured by the Nielsen?

10 Now, let me give you an example. It certainly seems
11 that a programmer that produces seasonal programming, that
12 only appears as specials during portions of the year might
13 entirely miss a Nielsen rating period.

14 Now, you are not a programmer who produces
15 primarily seasonal programming that might not be adequately
16 represented in the Nielsen, are you?

17 A Not primarily. We do produce specials though.

18 Q But most of the programming that you run is on
19 several days a week, at least once a week?

20 A That's correct.

21 Q Twelve months a year?

22 A That's correct.

23 Q So, it should show up in the Nielsen, if the
24 stations that it was being carried on were in the sample?

25 A That's true, yes.

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1 Q Do you have any other -- other than the failure of
2 stations that CTC is carried on to be included in the sample,
3 do you have any other basic criticisms of the Nielsen as it
4 affects small broadcasters and programmers like CTC?

5 A I think the sample should include cable systems
6 with fewer than 80,000.

7 Q And do you have any idea what percentage of
8 royalties are generated by the 119 stations in the sample?

9 A I think it is 93 or some percent.

10 Q So, clearly, if you could expand the sample, but if
11 you would do it, it would be a cost and the benefit would be
12 relatively small, right, because you are dealing with only a
13 small portion of the fund, is that right?

14 A It would be a benefit to us.

15 Q I recognize that. It would make sure you would get
16 more than zero?

17 A That is correct.

18 Q And we acknowledge that. Now, turning to page 7.

19 A (Perusing document)

20 Q The very first paragraph there talks about an
21 increase in full-time distant subscribers, that's comparing
22 '86 to '87, is that right?

23 A That is correct.

24 Q And this Tribunal has ruled that such comparisons
25 from '86 to '87 are not relevant to its consideration, is

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1 that right?

2 A Well, I am not sure about that. If you are going
3 to look at relative information, or have any kind of a
4 comparison, to determine growth, you are going to have to
5 compare whether or not it grew from one year to the next, I
6 would think.

7 Q Now, let me call your attention to the order of the
8 Tribunal dated November 29, 1989, and specifically to the
9 response to Objection 3, where the Tribunal struck material
10 beginning on page 5 and continuing to the middle of page 6,
11 including CTC Rebuttal Exhibit 6, on the ground that,
12 "Comparison between years is irrelevant".

13 What you have done here at the top of page 7 is a
14 comparison between years. This is to the objection of the
15 Devotional -- Settling Devotional Claimants based on a
16 comparison of programming between '86 and '87, also, on a
17 ruling of the Tribunal that was made in the original direct
18 case presentation.

19 A They allowed Exhibit 7-A and -- 7 and 7-A, which
20 also --

21 Q Well, we will talk about those in a minute, because
22 I don't think we objected, perhaps, to portions of those,
23 because portions were relevant. We will talk about the
24 relevant, and perhaps the irrelevant.

25 A All this you did object to.

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1 Q Let's talk about the top of page 7, Mr. Kennedy, if
2 we could. And if you would answer my questions -- I know you
3 have some points to make, and you will have a full
4 opportunity after I get through asking you questions, if you
5 want to make a statement on redirect, that's fine. But let
6 me ask the questions, and if you will answer my questions, we
7 will get through this a lot faster.

8 Now, again, at the top of page 7, that's basically
9 a comparison, is that not right?

10 A That is correct.

11 Q And are you aware that the Tribunal has ruled that
12 comparison between years is irrelevant?

13 A For the Devotional Claimant exhibit that I used--
14 I mean, the Nielsen Report on Devotional Programs.

15 Q Were you given an award by this Tribunal in 1986?

16 A No.

17 Q You weren't?

18 A We were given --

19 Q There was a settlement in '86?

20 A Yes.

21 Q So, this Tribunal has no basis upon which to use
22 '86 to project to '87, does it?

23 A No.

24 Q And the Tribunal doesn't even know what the amount
25 of the settlement was in 1986, does it?

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1 A I am not sure if they do, or not.

2 Q Let's turn to those exhibits you referred to, Mr.
3 Kennedy?

4 A (Perusing documents)

5 Q Exhibit No. 7, first. And in the left-hand column
6 under the heading 1986-2, that is information as to the
7 number of distant systems that CTC programming was carried on
8 in '86-2?

9 A Yes.

10 Q The number of subscribers?

11 A That's correct.

12 Q And the purpose of that is to allow the
13 computations on page 7; which were the comparison?

14 A That's correct.

15 Q Now, the same is true of the left-hand -- the
16 material on the left of Exhibit 7-A?

17 A (Perusing document) I am not sure if that is
18 listed on page 7, or not.

19 Q Okay, the material on the left-hand column is '86-2
20 data, right?

21 A That's correct.

22 Q And down at the bottom where you have Total
23 Subscriber Increase, 179,609 or 56 percent, a 22.7 percent
24 increase in Form 3 systems, that's from '86 to '87?

25 A Yes.

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1 Q That's not '87-1 and '87-2?

2 A No, it is not.

3 Q Now, do you have licensing agreements with any of
4 the stations that are listed on CTC Rebuttal Exhibit No. 7--
5 does CTC have licensing agreements?

6 A Well, that's not part of my testimony.

7 Q Well, you have listed these stations here, and I
8 want to know if you have licensing agreements for them?

9 A Let's see, on what page?

10 Q Exhibit No. 7.

11 A Exhibit No. 7 -- of all the systems that carry us,
12 that we know about, we do have agreements with, yes.

13 Q With all of those TV stations?

14 A With all of the TV stations that we know are
15 carrying us we have agreements with.

16 Q And did you have agreements with them in 1987?

17 A Sure. This is what I am saying, with all TV
18 stations that we are aware are carrying our programming, we
19 have licensing agreements with.

20 Q That is put in the present. I would like to know
21 in 1987, if you had licensing agreements with every station
22 --

23 A That is what I am saying, I am not trying to be
24 facetious.

25 Q Okay. But you did in 1987?

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1 A Sure, we knew each one of these stations was
2 carrying our programming and we gave them permission to do
3 that.

4 Q And did you -- are there other stations that aren't
5 listed here? I think there was a reference yesterday to a
6 station in Keokuk, Iowa -- no, that was 1988, wasn't it?

7 In '87, there was a reference to a station,
8 perhaps, in Whitley City, Kentucky, in CTC Exhibit RX-5A,
9 should that station be on this list?

10 A (Perusing document) No, that came later on in the
11 year. They were inquiring about -- they weren't carrying us
12 at that time.

13 Q What TV station is that?

14 A I'm not sure -- I am not sure if it is a TV
15 stations, or if it is a cable system.

16 Q In fact, I've looked them up in the yearbook, and I
17 have brought it with me today, and I don't see any TV station
18 licensed to --

19 A That's a personal friend of Bob Dandridge, who is
20 the president -- I think it is a cable system, I'm not sure.

21 Q And are you aware that this Tribunal can make no
22 awards for direct carriage by cable system of satellite
23 transmitted programming?

24 A Yes.

25 Q And is the same thing true of Keokuk, was that a TV

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1 station, that you referred to in Exhibit RX-5?

2 A I did not talk to those people, our sales manager
3 handled that and he passed on the information to me.

4 Q Do you know whether that is a TV station, a
5 translator, an LPT station?

6 A I think it is probably LPT, but I don't know for
7 sure.

8 Q Again, I can't find them listed in the 1987 or 1988
9 yearbooks as a TV station, any TV station in Keokuk.

10 A This is typical of people that we get calls and
11 letters from, asking permission to carry our programming, and
12 whenever we get these, we always give them permission.

13 Q And on the other hand, there are other people who
14 you believe are carrying it without your permission?

15 A Yes, after the fact we get letters on occasion from
16 people saying "We watch a certain program", that we weren't
17 aware of.

18 Q Okay, let's look at CTC Rebuttal Exhibit No. 9,
19 what does this exhibit represent, Mr. Kennedy?

20 A No. 9?

21 Q Yes, sir.

22 A (Perusing documents) That is the Joy Junction
23 mailing list.

24 Q The Joy Junction mailing list.

25 A Yes.

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1 Q Now, have you checked a sampling of these, or all
2 of these, to determine how many of them received the
3 programming of CTC direct via satellite to cable systems, or
4 how many received it via viewing distant TV signals?

5 A That is going to be a laborious process. I am
6 working on this entirely on my own, and I did not have the
7 time to do it.

8 Q And, in fact, a very high percentage of these
9 includes -- is of people who receive the programming of CTC
10 directly from the satellite to their cable system, without it
11 ever being broadcast over a TV stations, isn't that true?

12 A I don't know that to be true.

13 Q Well, let's go to your list of the TV stations that
14 carry you on a distant signal basis, and that would be
15 Exhibit 7.

16 A Okay. (Perusing documents)

17 Q Let's go through and find out where these stations
18 are. Do you know where KFCB is?

19 A KFCB, I believe it is Concord, California, serving
20 Sacramento.

21 Q Okay, what about KTVN, where is that?

22 A KRVN is Santa Ana, serving Los Angeles.

23 Q Okay. How about KTBO?

24 A I am not sure -- let's see --

25 Q These would all be listed in your Exhibit 10,

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1 wouldn't they?

2 A Oklahoma City.

3 Q KTBO is Oklahoma City?

4 A Yes. Tacoma, Washington; Chicago, Illinois for
5 WCFC.

6 Q KYFC is Kansas City, isn't it?

7 A Yes. Clearwater, WCLF.

8 Q WHFT?

9 A WDOI is Canton, Ohio; WHFT is Miami, Florida; WHMB,
10 Indianapolis; WHME is South Bend, Indiana; WKOI, Richmond,
11 Indiana; WLYJ, Clarksburg, West Virginia; WOAY, Oak Hill;
12 WPCN, Greensburg-Pittsburgh; WTBY, Poughkeepsie, New York;
13 WTJC, Springfield, Ohio; WTKK, Manassas.

14 Q Okay, now none of those stations are anywhere near
15 Louisiana, are they?

16 A No.

17 Q And yet I saw some entries in here, Mr. Kennedy,
18 from my old home grounds of Bourg, Louisiana; Montegut,
19 Louisiana -- how would those people have found out about CTC
20 programming?

21 A That's a good question. We would like to know
22 that, too. As a matter of fact, every month when we get
23 information from, especially the Joy Junction letters, we
24 wonder how these people have seen the program. And in some
25 cases, they write them back and ask what station they are

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1 watching it on -- some are home dishes.

2 Q Some are home dishes?

3 A Yes.

4 Q And this Tribunal doesn't at this point, at least,
5 distribute funds for home dishes, does it?

6 A That's correct.

7 Q And some are cable systems, like the same system
8 that serves Bourg and Montegut, Louisiana?

9 A I am not sure.

10 Q You are not sure. Do you think some of these may
11 be on cable systems that pick up this signal directly?

12 A That's possible.

13 Q It's possible. In fact, I have just gone through,
14 there are very few of these, Mr. Kennedy, that are certainly
15 nowhere near half, or even a third, are in or near the
16 markets that you have listed here, wouldn't that be fair to
17 say?

18 A I can't confirm that, because I have not gone
19 through the entire --

20 Q But you don't know, one way or the other, do you?

21 A No.

22 Q You can't tell me that the substantial proportion
23 of the names that are listed here are people who watch your
24 programming over distant broadcast signals carried by cable?

25 A I can't confirm that, no.

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1 Q And in many cases there are multiple entries from
2 one address, do you have any idea what that means? Does that
3 mean that one letter was written and they listed all the
4 names of the kids, so you have listed all of the children
5 down -- or would each have written --

6 A I am not familiar with that.

7 Q Well, let's take a look at one on 8-27-87, I just
8 happened to turn to this page.

9 A (Perusing document) Which one is that?

10 Q This is the one for James Armstrong, Jr., Rigoberto
11 Raiz, and Selestino Jose Galley, care of Chaplin Roy Hill,
12 Correctional Institute, Riverview, Florida.

13 A (Perusing document) Okay.

14 Q Now, how would those -- do you have any idea how
15 those three people would come to write letters on the same
16 day to Joy Junction?

17 A I am not sure where you are looking at, 8-27--
18 I've got 8-27 here, but I don't see that.

19 Q Well, it is about the sixth entry for 8-27-87.
20 Your ID number 12-2-89, 90 and 91.

21 A Yes, I see that.

22 Q Now, over on the right-hand column there are a
23 series of letters, Roman numerals, what do those mean?

24 A I believe at the beginning of the information that
25 was -- it is the Bible program that was sent to them, to

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1 identify the Bible program, I believe.

2 Q So, each of these persons was sent something --

3 A Let me look at the original, just to make sure
4 -- (perusing documents) -- yes, it is the Bible lesson
5 number.

6 Q Okay, I think we have covered all we can on Exhibit
7 9. Let's talk about Exhibit 10 for a second, Mr. Kennedy.

8 A Okay.

9 CHAIRMAN ARGETSINGER: Before we do that, Mr.
10 Kennedy, do you think there are a number of people who pick
11 up directly on their own satellite dishes?

12 THE WITNESS: I am not sure how many people do pick
13 up directly. There are 2 million dishes in the United
14 States, we have no way of knowing, if they don't tell us in
15 their letter, if they are watching by satellite, or if they
16 are watching by cable, or a television station. And in many
17 cases they do identify that they are watching on a station.

18 CHAIRMAN ARGETSINGER: Thank you.

19 BY MR. HARRINGTON:

20 Q And CTC doesn't scramble its satellite signal, does
21 it, Mr. Kennedy?

22 A No, neither does the 700 Club, or any other
23 ministries that I know of.

24 Q But the family channel, CBN is scrambled, isn't it?

25 A Not the ministry portion.

1 Q Now, let's turn to Exhibit 10.

2 A All right, (perusing documents)

3 Q Let's look at page 2.

4 A Okay.

5 Q Do you see under the column "BC" -- do you see that
6 column headed "BC"?

7 A Yes.

8 Q I see some entries there that are "D", and I
9 understand from Mr. Larson's testimony that means "distant"?

10 A That's correct.

11 Q What do the "X's" that are shown there, next to
12 Stockton, California for '87-2 and San Bernardino, California
13 for '87-1, mean?

14 A I believe he explained that in his testimony, and I
15 would have to look at the transcript to see what his
16 explanation was.

17 Q What he said was that that stands for part-time
18 carriage. Do you know what part-time carriage is, in the
19 context of a cable statement of account, Mr. Kennedy?

20 A I thought a "C" was part-time carriage. According
21 to this "BC" is distant, full-time "D" and "X".
22 Let me check his testimony, maybe I have it wrong--
23 (perusing documents) -- you are right, he said "X" is
24 partially distant.

25 Q Now, at the hearing which was held a month, or so

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1 ago, there were questions raised about three of the entries
2 in the study that CTC presented in its original direct case
3 about White Sulphur Springs, West Virginia; about Camarillo,
4 California; and about Peterstown, West Virginia.

5 A Uh-huh.

6 Q Have those all been eliminated from Larson's
7 November the 9th study, which you have offered as Exhibit 10?

8 A It was brought to my attention yesterday that
9 Peterstown is still in there. And I have -- from Mr. Jacobs'
10 testimony -- the exhibit that you presented in your rebuttal
11 case did not show a map, I believe.

12 I could not find it anywhere on the Exhibit 13, or
13 whatever the map was that he presented. So, I have no way of
14 knowing, or confirming whether or not it is more than 35-mile
15 from that station, or not.

16 Q So, you don't know whether to challenge Mr. Jacobs'
17 testimony, or not? I just happen to have an atlas to help
18 refresh your -- or help you make a determination.

19 A I knew you would do that.

20 Q Let me call your attention to the Rand McNally
21 Cosmopolitan World Atlas, if you look in Monroe County, West
22 Virginia, perhaps you will see the community of Peterstown in
23 the far southwest corner of the county.

24 A (Perusing document)

25 Q Right on the Virginia border.

1 A Oh, yes, I see it.

2 Q You see that. Now, let me show you another map,
3 which is the Cable Atlas, which is a 35-mile zone--
4 (handing) -- for West Virginia. And on this map, which is
5 1987 Television Digest Cable and Station Coverage Atlas,
6 there are a series of circles representing 35- and 55-mile
7 distances from television stations, cities of license, and do
8 you see Bluefield, West Virginia there?

9 A (Perusing document) Yes, I do.

10 Q And do you see a circle -- two circles around
11 Bluefield, one in -- in West Virginia, both in green, one
12 farther out than the other?

13 A Yes.

14 Q And can you tell me whether --

15 A Both in green?

16 Q Both of the circles would be in green.

17 A Oh, this one and this one (indicating).

18 Q Yes. One would be the 35-mile circle for
19 Bluefield, and one is the 55-mile circle.

20 A Uh-huh.

21 Q Would you check the scale to see if that looks
22 about right?

23 A (Perusing document) That's about right.

24 Q Can you tell me if the 35-mile circle would include
25 or exclude Peterstown?

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1 A It seems like it would include it.

2 Q I think that's correct. Who made the decision to
3 delete Camarillo and White Sulphur Springs from the November
4 9th report?

5 A Apparently Mr. Larson did.

6 Q Did you consult with him on that?

7 A I asked him to make sure his figures were correct.

8 Q Do you know if he went through and checked any of
9 the other entries in here, to see if they were, in fact,
10 distant?

11 A From my phone conversation with him, he did try to
12 correct everything that he could find.

13 Q Did he go and individually check every listing on
14 here, to see if they were correct?

15 A I don't know if he did it, personally, or if he had
16 someone else do it.

17 Q But someone checked every single cable system here
18 to see whether --

19 A I can't confirm that. He just told me that, as far
20 as he knew, that was correct.

21 Q So, we don't know whether he did, or not?

22 A No, I am taking his word for it.

23 Q But did he say to you, "I have checked each one",
24 or did he say, "As far as I know, it is correct"?

25 A Well, I assume that he went ahead -- that was a big

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1 issue --

2 Q I don't want an assumption. What did he say to
3 you?

4 A He said, "I have checked -- he did not say I have
5 checked, he said, "As far as I know, everything is correct".

6 Q Okay. But he left Peterstown in?

7 A Yes, I just discovered that yesterday -- for some
8 reason.

9 Q For some reason.

10 MR. HARRINGTON: Just let me check my notes for a
11 second, I am about through. (Perusing documents)

12 THE WITNESS: I will concede and take Peterstown
13 out, if that's a problem.

14 BY MR. HARRINGTON:

15 Q Mr. Kennedy, did CTC swap programming with any
16 other TV stations in 1987?

17 A I am not aware if they did.

18 Q Would you know if they did?

19 A Not necessarily, it would have been handled through
20 the sales department.

21 Q So you don't know if they did, or didn't?

22 A No.

23 Q Now, in your exhibits you go into great detail to
24 show the number of instances in which programming of the
25 Devotional Settling Claimants would have appeared in not all

1 of the six Nielsen cycles, that's a fair statement, isn't it?

2 A Pretty much so.

3 Q And isn't it a fact that the Nielsen would
4 automatically take into account by reduced ratings, the fact
5 that the stations didn't appear on a particular -- the
6 programs didn't appear on a particular station, because there
7 would be no ratings generated if the program wasn't carried?

8 A I am not sure I understand what you mean.

9 Q Okay. In computing the amount of household hours
10 watching a particular show, if that show is not on a station,
11 no household hours can possibly be attributed to it, can
12 they?

13 A That's true.

14 Q So, Nielsen would automatically take into account
15 in coming up with a number for viewing, the fact that a
16 station -- that a program may have been carried on less or
17 more stations in one rating period as compared to another?

18 A That seems correct.

19 Q One other thing, this goes to the issue of full-
20 time carriage, again, the issue of whether signals or
21 programs were dropped from signals during a portion of the
22 year. Are you familiar with the rules and regulations of the
23 Copyright Office as they relate to distant signal
24 determinations for copyright statements?

25 A Not greatly, no.

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1 Q Have you ever read the rules of the Copyright
2 Office?

3 A I have tried to read as much as I can, yes.

4 Q Okay. Well, let me call your attention to Section
5 201.17(f)(2)(a) of the Rules of the Copyright Office, which I
6 will read and then you can look at it.

7 It says, "Where a cable system carries a primary
8 transmitter on a full-time basis during any portion of an
9 accounting period, the system shall compute a DSE for that
10 primary transmitter as if it were carried full-time during
11 the entire accounting period".

12 CHAIRMAN ARGETSINGER: And this will be an open
13 book exam --

14 BY MR. HARRINGTON:

15 Q Is that a correct reading of what is marked there?

16 A (Perusing document) What is the heading?

17 Q I don't have the complete rule, but it relates to
18 the computation of DSE's on the Statements of Account. I can
19 provide the entire rule for the Tribunal, should it desire.

20 A It is as you read.

21 Q Has anyone ever told you that a cable system must
22 pay a full accounting period's royalties for a signal, even
23 though it was carried only one day in that period?

24 A That was brought up in yesterday's -- by Mr.
25 Gottfried.

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1 Q Before Mr. Gottfried pointed that you, you didn't
2 know that, did you?

3 A No, I did not.

4 Q So, in fact, if CTC -- if WCLF were carried one day
5 by the Lakeland Cable System and then cut off, Lakeland would
6 still have to pay the full royalty for that signal, wouldn't
7 they?

8 A According to that, yes.

9 Q Right. And there would be no reason to pro-rate
10 the amount of money that would go to CTC, because the money
11 was being paid for it, isn't that right?

12 A That's true.

13 MR. HARRINGTON: Mr. Chairman, I don't have any
14 further questions at this time.

15 CHAIRMAN ARGETSINGER: Well, I am going to ask Mr.
16 Kennedy -- you probably will want some comment, redirect, or
17 however we style it. Do you wish to go on after a short
18 break now, or would you rather take a longer break?

19 THE WITNESS: I will put my comments in the
20 Proposed Findings.

21 CHAIRMAN ARGETSINGER: So then --

22 THE WITNESS: The testimony will stand as is.

23 CHAIRMAN ARGETSINGER: Well, Commissioner, do you
24 have anything?

25 COMMISSIONER AGUERO: No, nothing.

1 MR. CASSLER: Mr. Harrington, did you say that you
2 were going to ask the Tribunal to take official notice of the
3 specialty stations, as listed by the Copyright Office?

4 MR. HARRINGTON: I had planned to do that in my
5 Findings. Let me see -- I have the FCC list, I think here--
6 let me see if I can find it real quick.

7 MR. CASSLER: Well, all I am asking is just if you
8 were asking the Tribunal to take official notice?

9 MR. HARRINGTON: It would save everyone time, if we
10 simply took official notice of the list.

11 COMMISSIONER AGUERO: Do you have any objection to
12 that, Mr. Kennedy?

13 THE WITNESS: No, not at all.

14 COMMISSIONER AGUERO: If there are no further
15 questions, then we will conclude this rebuttal phase of the
16 Devotional Phase 2.

17 And you are all aware of the dates -- Mr.
18 Harrington, you were not here yesterday, so we agreed in your
19 absence the 20th and the 10th, I believe.

20 MR. HARRINGTON: Mr. Gottfried will do all the
21 writing.

22 MR. GOTTFRIED: I don't remember agreeing to it, I
23 remember being told.

24 COMMISSIONER AGUERO: That concludes this hearing

25 (Whereupon, the witness was excused)

1 (Whereupon, at 12:20 p.m., the hearing in this
2 matter was adjourned)
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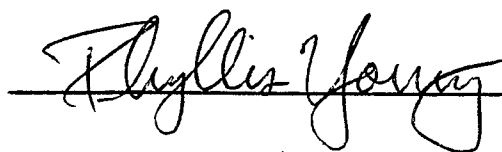
In the matter of: Cable Copyright Royalty Distribution Proceedings -
Phase II,
Docket No. CRT 89-2-87CD

Before: Copyright Royalty Tribunal

Date: December 5, 1989

Place: Washington, DC

represents the full and complete proceedings of the
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